

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Benjamin D. Mikkalson,

Civil No. 10-827 (RHK/LIB)

Petitioner,

ORDER

v.

Mark Sizer, Nick Hendrickson,

Respondents.

Before the Court is the December 8, 2010 Report and Recommendation of United States Magistrate Judge Leo I. Brisbois in which Judge Brisbois recommended the denial of Petitioner's application for a writ of habeas corpus and that this Court declined to issue a Certificate of Appealability.

The undersigned has conducted a de novo review of the Report and Recommendation and Petitioner's Request for Review and Issuance of Certificate of Probable Cause. That review satisfies the Court that Judge Brisbois's recommended disposition is fully supported by the record before him and applicable legal authorities. In addition, the Court agrees with Judge Brisbois that the matter does not warrant the issuance of a Certificate of Appealability.

Accordingly, and upon all of the files, records and proceedings herein, **IT IS**

ORDERED:

1. Petitioner's Request for Review and Issuance of Certificate of Probable Cause¹ is

DENIED;

2. The Report and Recommendation (Doc. No. 14) is **ADOPTED;**

¹ The Court declines to issue a Certificate of Appealability.

3. The application for writ of habeas corpus (Doc. No. 1) is **DENIED**; and
4. This action is **DISMISSED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 5, 2011

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge